

REMARKS

Claims 1-45, 47, 49-60 are pending in the present application. Claims 1-34, 37-45, and 51-60 were previously withdrawn from consideration as drawn to a non-elected invention. Claims 46 and 48 were previously canceled. By virtue of this response, claims 35 and 50 have been amended. No claims have been canceled and no claims have been added. Accordingly, claims 35, 36, 47, 49, and 50 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Claim Rejections under 35 U.S.C. §103(a)**Claims 35, 36, 47, 49, and 50**

Claims 35, 36, 47, 49, and 50 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Pat. Pub. No. 2002/0087169 to Brock et al. ("Brock") in view of U.S. Pat. No. 5,221,255 to Mahurkar et al. ("Mahurkar"). With respect to independent claim 35, the Office Action states that, "Brock et al. disclose a device (Figs 31, 32) comprising a rigid shaft (330) with a housing (349) on a distal end. The housing comprises a wall having an aperture (distal end of housing) for retaining a mandrel (364) therein. The mandrel releasably couples a plurality of tethered anchors (350, 312) within the housing to hold the shape memory anchors in the undeployed state until deployment (Fig 34; para 0274)." In specific response to Applicant's arguments filed on 8/21/07, the Office Action states that the, "definition of the wall is not limited to the length of the housing. The housing of Brock et al. has some thickness and thus the wall may be interpreted as the thickness at the distal end of the housing with a central aperture..." The Office Action goes on to state that, "if the wall is interpreted to be the longitudinal distance of the housing as opposed to a radial distance...the aperture is not limited to extending along a longitudinal length of the wall."

Applicants disagree with the Office Action's interpretation of a "wall having at least one aperture" therein. Nevertheless, in order to expedite allowance and issuance of the instant claims, Applicants have amended independent claim 35 (from which the remaining rejected claims depend)

to specifically address the Office Action's rejection regarding the precise location and positioning of an aperture. That is, claim 35 has been amended to recite a device comprising, "an elongate body having a proximal end and a distal end; and a housing at the distal end of the elongate body, the housing comprising a wall spanning the longitudinal length of the housing, wherein the wall spanning the longitudinal length of the housing has at least one aperture therethrough, the aperture spanning a longitudinal length thereof and retaining a mandrel therein, the mandrel releasably coupling a plurality of tethered anchors with the housing" (emphasis added).

Brock clearly fails to describe a housing at a distal end of an elongate body having an aperture therethrough, where the wall spans the longitudinal length of the housing and where the aperture spans a longitudinal length of the wall, the aperture retaining a mandrel therein. Mahurkar fails to cure this deficiency. For at least this reason, a *prima facie* case of obviousness cannot be maintained. Accordingly, Applicants respectfully request that the rejections of claims 35, 36, 47, 50, and 53 under 35 U.S.C. §103 be withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

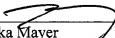
Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application, without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as whole. Applicants respectfully traverse each of the rejections and each of the assertions in the Office Action regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Applications reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no.

578492001500. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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